UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASOCIACION DE EMPLEADOS DEL ESTADO LIBRE ASOCIADO DE PUERTO RICO And UNION INTERNACIONAL DE TRABAJADORES DE LA INDUSTRIA DE AUTOMOVILES, AEROESPACIO E IMPLEMENTOS AGRICOLAS, U.A.W., LOCAL 1850	Cases: 12-CA-218502; 12-CA-232704

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

1. To the Administrative Law Judge's defective quote of Article 41 of the collective bargaining agreement (ALJD page 3, L.19-32).

2. To the Administrative Law Judge's inaccurate finding of fact on whether Law No. 148 of June 30, 1969, 29 L.P.R.A. 506, applies to employees covered by a collective bargaining agreement, and particularly to Respondent's Union employees (ALJD page 4, L.5-10).

3. To the finding of the Administrative Law Judge (ALJ) that Respondent Asociación de Empleados del Estado Libre Asociado de Puerto Rico (hereinafter referred to as AEELA or Respondent) unilaterally reduced the Christmas Bonus payments in 2017 and 2018 (ALJD page 4 L. 29-35, page 5 L. 1-40).

4. To the incorrect description by the ALJ of the stipulated evidence submitted by the parties, in finding that "On December 5, 2017, the Union accepted Respondent's

proposed Christmas Bonus of 8.65% of salary to a maximum of $40,000 for years 2017 and 2018. (Jt. Exhs. 11(b), 12 (b).) That term was reiterated and then Respondent attached a condition to the Christmas Bonus—subject to acceptance of the extending the contract until June 30, 2019 and certain salary provisions". (ALJD page 4, L. 34, page 5 first paragraph, lines 1-5).

5. To the ALJ's finding, as if materially significant, that "Despite traditionally paying the Christmas Bonus the day before Thanksgiving, Respondent waited to pay employees on December 15, 2017". (ALJD page 5, L. 7-11).

6. To the ALJ's finding that "For the 2017 Christmas Bonus, Respondent significantly reduced the Christmas Bonus from previous years and paid almost every bargaining unit a gross amount of $600.00". (ALJD page 5, L. 8-10).

7. To the inaccurate description by the ALJ of the stipulated facts and evidence submitted by the parties, in finding that "On December 15, 2018, Respondent paid to employees a maximum Christmas bonus of $600.00 gross pay instead of the formula stated in the extended collective bargaining agreement. (Stip. 50-51; Jt. Exh. 36 (b))". (ALJD page 5, L. 35-40).

8. To the Analysis of the Administrative Law Judge (ALJ) that AEELA "contends that the collective bargaining agreement's specific language limits payment of the Christmas Bonus to years 2013 through 2016, but nothing for years 2017 and 2018". (ALJD page 6 L. 35-40).

9. To the Analysis of the Administrative Law Judge (ALJ) that AEELA's position was that "no past practice existed because the contract term was no longer applicable" (ALJD page 6 L. 40-42).

10. To the finding of the Administrative Law Judge (ALJ) that AEELA's position was that "The parties did not agree on any bonuses for 2017 and 2018 and therefore Respondent is responsible only for the years stated in the agreement, which defines the status quo" (ALJD page 6 L. 44-46).

11. To the analysis of the Administrative Law Judge (ALJ) that in 2017 and 2018 AEELA violated section 8(A)(5) and (1) by failing to pay the employee's contractual Christmas bonus. (ALJD page 7 L. 25-45, page 8 L. 1-45, page 9 L. 1-45, page 10 L. 1-45).

12. To the analysis of the Administrative Law Judge (ALJ) that "In 2017 Respondent Unilaterally Changed the Paid Amount of Employee's Christmas Bonus" and that AEELA "implemented changes to the Christmas Bonus" (ALJD page 7 L. 25-45, page 8 L. 1-45, page 9 L. 1-45).

13. To the analysis of the Administrative Law Judge (ALJ) that "The Christmas Bonus was a past practice" (ALJD page 7 L. 29-45, page 8 L. 1-45, page 9 L. 1-45).

14. To the analysis of the Administrative Law Judge (ALJ) that "Here, General Counsel establishes the past practice, which existed since 2013 and forward. It was paid annually according to the terms of the collective bargaining agreements." (ALJD page 8 L. 40-45).

15. To the analysis of the Administrative Law Judge (ALJ) that "Employees could expect the Christmas bonus to be paid according to the percent and maximum established in the collective bargaining agreements, not according to the limits set by the Commonwealth's law." (ALJD page 8, L. 44-46).

16. To the analysis of the Administrative Law Judge (ALJ) that "Respondent contends that, because the language of the expired agreement did not contain modification for

year 2017, it had no obligation to continue the term according to the 2016 payment schedule and instead reverted to the terms of PR Law No. 148. (R. BR. At 10) This argument is unavailing because of the law's exception for collective bargaining agreements". (ALJD page 9, L. 5-9).

17. To the ALJ's incorrect analysis under both the contract coverage and waiver tests, as well as in considering the alleged precedents of Wilkes-Barre General Hospital, 362 NLRB No. 148 (2015), enfd. 857 F. 3d 364 (DC Cir. 2017); San Juan Bautista Medical Center, 356 NLRB 736(2011); and Hospital San Carlos Borromeo, 355 NLRB 153 (2010). (ALJD page 9, L. 5-37).

18. To the ALJ's statement that, as it relates to the case at hand, "Wilkes-Barre, *supra*, also is instructive under a contract coverage test". (ALJD page 9, L. 20-25).

19. To the ALJ's dismissive and in passing mention of MV Transportation, Inc, *supra*, in footnote 6 (ALJD page 9), only to fail to apply its holding to the case at hand.

20. To the ALJ's implied reliance on the "clear and unmistakable waiver" standard, a legal concept that has been expressly abandoned/rejected by the Board in MV Transportation, Inc. Amalgamated Transit Union Local #1637, AFL-CIO, CLC, Case 28-CA-173, Decision and Order dated September 10, 2019, 368 NLRB No. 66 (2019), instead of utilizing the "contract coverage" standard which was adopted in said case for being more consistent with the purpose of the Act. (ALJD page 9, L. 30-37).

21. To the ALJ's refusal to apply ordinary principles of contract law in reviewing Article 41 of the CBA, thus rejecting the contract coverage standard's demand that the plain language of the provision be afforded full effect.

22. To the Administrative Law Judge's failure to even mention and/or consider in the

ALJD the first sentence of Article 41, and its effect on the case at hand, as it pertains to the application of the contract coverage standard that has been adopted by the NLRB in MV Transportation, Inc, *supra*.

23. To the apparent assumption by the ALJ, without any evidence on the record to sustain said assumption, and completely discarding the language of Article 41, that the modifications specified for particular years 2013, 2014, 2015 and 2016, are permanent.

24. To the conclusion of the ALJ that Board precedent supports the above finding and does not support the Respondent's claim that it complied with the status quo provided by the plain language of the expired collective bargaining agreement, by paying the amount provided in Law No. 148 of June 390.

25. To the conclusion of the ALJ that "Respondent still had an obligation to bargain before it implemented changes" (ALJD page 7, L.30-35) and that "Respondent failed to give the Union advance notice of the change in the Christmas Bonus". (ALJD page 9, L. 40-45).

26. To the analysis of the Administrative Law Judge (ALJ) that "in 2018 respondent Unilaterally Changed the Amount of the Christmas Bonus". (ALJD page 10 L. 1-41).

27. To the analysis of the Administrative Law Judge (ALJ) that "I disagree that Respondent articulates a sound basis for the modification. Respondent contends that none of the extensions included any language to provide the Christmas bonus beyond 2016". (ALJD page 10, L. 30-41).

28. To the ALJ's proposed Remedy that the Respondent be ordered to cease and desist from certain unfair labor practices and take certain affirmative action. (ALJD page 12,

L. 10-12).

29. To the ALJ's proposed Remedy that the Respondent rescind "the unilateral changes it made" and "make unit whole employees whole for any loss of earnings and other benefits attributable to its unlawful unilateral changes in the 2017 and 2018 Christmas bonuses". (ALJD page 12, L. 10-30).

30. To the ALJ's Conclusions of Law (ALJD page 11, L. 1-40, page 12 L. 1-6).

31. To the ALJ's Remedy (ALJD page 11, L. 8-31).

32. To the ALJ's recommended Order to cease and desist from failing and refusing to bargain with the Union; from unilaterally changing the terms and conditions of employment of its unit employees, including reducing Christmas bonus pay, without first notifying the Union and giving it an opportunity to bargain, and ; from in any like or manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act; and that the Respondent post and distribute a Notice to Employees, and to each of the terms of the proposed Notice to Employees. (ALJD 12, L. 32-45, page 13 L.1-46, page 14 L. 1-15, ALJD Appendix).

Dated at San Juan, Puerto Rico, this 4th day of December of 2019.

RESPECTFULLY SUBMITTED.

CERTIFICATE OF SERVICE: This is to certify that on this same date a true and exact copy of the foregoing Exceptions to the Decision of the Administrative Law Judge was electronically filed via the NLRB E-Filing System with the National Labor Relations Board and served on the parties via email and first-class mail, postage prepaid: to Atty. Manijee Ashrafi-Negroni, Sub-regional Office of the NLRB in Puerto Rico, to Manijee.Ashrafi-Negroni@nlrb.gov; to Atty. Alexandra Sanchez ("charging party") to asanchez@msglawpr.com.

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